

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2002-006

September 26, 2002

### ALBERTA HUMAN RESOURCES AND EMPLOYMENT

Review Number 2266

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** Alberta Human Resources and Employment (the “Public Body”) requested that the Alberta Forest Products Association (the “Affected Party”) review a number of audits completed by the Applicant’s company. The Affected Party completed the review and sent a report (the “record”) to the Public Body. The Public Body retained the record in its possession for approximately two weeks and then returned it to the Affected Party.

The Applicant subsequently made a request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Public Body for access to the record. The Public Body denied the Applicant’s access request on the ground that it no longer had custody or control of the record. The Applicant asked this Office to review this decision. The Applicant also asked this Office to review whether the Public Body had a duty under section 35(b) [previously section 34(b)] to retain the information in the record.

The Adjudicator found that the Public Body presently had control of the record for the purposes of the Act and ordered the Public Body to retrieve the record from the Affected Party. However, the Adjudicator found that, at the time that the Public Body had custody of the record, it did not have a duty under section 35(b) [previously section 34(b)].

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c.F-25, ss. 1(e) [previously s. 1(1)(e)]; 1(n) [previously s. 1(1)(n)]; 4(1) [number unchanged by R.S.A. 2000]; 6(1) [number unchanged by R.S.A. 2000]; 35(b) [previously

s. 34(b)]; 72 [previously s. 68]; 92(1)(e) [previously s. 86(1)(c.1)]; **ON:** *Freedom of Information and Protection of Privacy Act*, 1987, s.2(1).

**Authorities Cited:** **AB:** Orders 96-019, 96-020, 99-023, 99-032, 2000-003, 2000-021; **ON:** Order 16.

## **I. BACKGROUND**

[para 1] On December 17, 1999, the Applicant's company completed six health and safety audits for the Capital Health Authority (the "CHA") and submitted the audits to the Alberta Safety Council (the "ASC") for review as part of the Partnerships in Health and Safety Program (the "Partnerships Program").

[para 2] On January 26, 2000, the ASC met with the Applicant to inform him that the first two audits had not met the ASC review standards. Furthermore, due to the Applicant's company's failure to meet the ASC standards on these two audits, the ASC would not be reviewing the remaining four audits. The Applicant and the ASC both contacted Alberta Human Resources and Employment (the "Public Body") regarding the rejected audits.

[para 3] On April 12, 2000, the Public Body sent a letter to the CHA (the "April 12, 2000 letter"). In that letter, the Public Body offered to arrange for an independent third party to review the audits. The Public Body subsequently arranged for the Alberta Forest Products Association (the "Affected Party") to perform the independent review.

[para 4] On May 26, 2000, the Affected Party completed the independent review and sent a report to the Public Body. The Public Body summarised the report and returned the original report to the Affected Party. The Public Body subsequently sent the Applicant's company an undated covering letter (the "undated letter") along with a copy of the summary. In that letter, the Public Body asked the Applicant's company to revise and resubmit the audits to the Public Body.

[para 5] The Applicant's company revised and resubmitted its audits to the Public Body. On July 11, 2000, the Public Body wrote a letter (the "July 11, 2000 letter") to the Applicant's company informing the Applicant's company that the Public Body found the revised audits acceptable according to quality assurance standards.

[para 6] On June 6, 2001, the Public Body received an access request from the Applicant.

[para 7] On June 15, 2001, the Applicant clarified his access request and confirmed that he was seeking access to the following two documents:

- 1) The Affected Party's original report regarding the 1999 health and safety audits of the CHA; and

2) The ASC audit guidelines for 1999.

[para 8] On July 6, 2001, the Public Body wrote to the Applicant denying his access request (the "July 6, 2001 letter") stating that it did not have custody or control of the requested records.

[para 9] On August 17, 2001, the Applicant sent the Public Body a request for review regarding the Public Body's decision not to disclose the Affected Party's report regarding the 1999 health and safety audits of the CHA.

[para 10] On August 27, 2001, the Public Body forwarded the request for review to this Office. The matter was set down for an oral inquiry. A Notice of Inquiry was sent to the Public Body, the Applicant and the Affected Party. The Notices of Inquiry gave each of these parties the opportunity to submit a written brief and to make representations at the inquiry.

[para 11] The Notice of Inquiry that was sent to the Affected Party also requested that the Affected Party provide this Office with a copy of the record. The Affected Party did not provide this Office with a copy of the record in response to this notice.

[para 12] On March 1, 2002, my legal counsel wrote to the Affected Party once again requesting that the Affected Party provide this Office with a copy of the record. The Affected Party once again refused to provide the record.

[para 13] The oral inquiry was held on March 14, 2002. The Public Body and the Applicant each provided this Office with a written submission and made representations at the inquiry. The Affected Party did not make a written submission and did not attend the inquiry.

[para 14] On March 15, 2002, I issued a Notice to Produce to the Affected Party which requested that the Affected Party provide this Office with a copy of the record.

[para 15] On March 26, 2002, the Affected Party sent to this Office, a complete copy of the record except for the names and company affiliations of the individuals who reviewed the audit on behalf of the Affected Party.

[para 16] At the inquiry, I agreed to accept a number of documents in camera. I accepted, in camera, attachments one and seven of the Public Body's written submission and the first three pages of a five-page letter, dated April 17, 1997, from this Office to the Public Body. In addition, at the inquiry the Applicant provided me with the copy of the Public Body's summary of the record. I accepted the Applicant's hand-written notes on page five of that document in camera.

[para 17] At the inquiry, I also requested that the Public Body provide me with a number of additional documents including the Public Body's record retention and

disposition schedule for the records relating to the independent review process. On April 5, 2000, the Public Body sent a letter with attachments to my Office (the “April 5, 2002 letter”) responding to my request.

## **II. RECORD AT ISSUE**

[para 18] The record consists of the Affected Party’s report regarding the health and safety audits of the CHA which were completed by the Applicant’s company.

## **III. ISSUES**

[para 19] There are two issues in this inquiry:

- A) Does the Public Body presently have custody or control of the record?
- B) At the time that the Public Body had the record in its custody or under its control, did the Public Body have a duty under section 35(b) [previously section 34(b)]?

[para 20] The Revised Statutes of Alberta (R.S.A. 2000) came into force on January 1, 2002. Although this did not result in substantive changes to the Act, various sections of the Act have been renumbered. Consequently, all section numbers referred to in this Order reflect the previous section numbers as well as the new section numbers under the R.S.A. 2000.

## **IV. DISCUSSION**

### **A) Does the Public Body presently have custody or control of the record?**

[para 21] Section 4(1) [number unchanged by R.S.A. 2000] states that the Act applies to all records in the custody or under the control of a public body. In addition, section 6(1) [number unchanged by R.S.A. 2000] states that an applicant has a right of access to any record in the custody or under the control of a public body. As such, in order for the Applicant in this inquiry to gain access to the record at issue, it must first be determined whether the Public Body has custody or control of that record.

#### **1) Custody**

[para 22] The Public Body states that it does not presently have custody of the record. The Public Body states that although it had possession of the record at one time, the Public Body has since returned the record to the Affected Party.

[para 23] In Order 2000-003, the Commissioner stated that a public body will have custody of a record if it has physical possession of the record. In that Order the

Commissioner also stated that a legal right of control or possession over a record is not a criterion that is relevant to custody.

[para 24] After a review of the evidence before me and all of the arguments of the parties, I accept the Public Body's assertion that it does not presently have physical possession of the record. As such, I find that the Public Body does not have custody of the record for the purposes of the Act.

## **2) Control**

### **a) Discussion of Relevant Criteria**

[para 25] The Public Body argues that it does not have control of the record for the purposes of the Act.

[para 26] The Applicant argues that the Public Body has control of the record for the purposes of the Act.

[para 27] In Orders 99-032 and 2000-021, the Commissioner identified a number of non-exhaustive criteria relevant to the issue of control. Outlined below are all of the criteria along with the arguments of each party and my decision as to whether each criterion is fulfilled.

#### 1) Was the record created by an officer or employee of the institution?

[para 28] The Public Body states that the record was not created by an officer or employee of the Public Body.

[para 29] The Applicant did not specifically address this criterion.

[para 30] Section 1(e) [previously section 1(1)(e)] of the Act states:

*1 In this Act,*

...

*(e) "employee", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body.*

(Emphasis Added)

[para 31] The Canadian Oxford Dictionary defines a "volunteer" as "a person who voluntarily takes part in an enterprise or offers to undertake a task" and "a person who works for an organization voluntarily and without pay." The dictionary further defines

“voluntary” as “done, acting, or able to act of one’s own free will; not constrained or compulsory, intentional; unpaid.”

[para 32] The evidence in this inquiry shows that the Affected Party acted as a volunteer when it undertook to review the audits and create the record.

[para 33] In this regard, I note that evidence, including the Public Body’s oral submission at the inquiry, the Public Body’s written submission and the July 6, 2001 letter, confirm that the Affected Party’s participation in the independent review was voluntary and that the Affected Party received no compensation for its time or expenses. Nevertheless, the Affected Party performed a service for the Public Body. Therefore, I find that the Affected Party created the record as an employee of the Public Body.

[para 34] Weighs in favour of the Public Body having control of the record.

2) What use did the creator intend to make of the record?

[para 35] The Public Body states that the Affected Party voluntarily created the record. The Public Body also states that it used the record in order to resolve the dispute between the Applicant’s company and the ASC.

[para 36] The Applicant did not specifically address this criterion.

[para 37] It is clear from the evidence before me that the Affected Party created the record. However, the evidence before me, including the Public Body’s evidence at the inquiry and the April 12, 2000 letter show that the record was created at the request of the Public Body for the Public Body’s use in conducting a quality assurance review.

[para 38] Furthermore, there is no evidence before me that the Affected Party would have performed the independent review or created the record if the Public Body had not requested the Affected Party do so.

[para 39] Weighs in favour of the Public Body having control of the record.

3) Does the institution have possession of the record either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?

[para 40] The Public Body states that, at one time, it did have a copy of the record that was voluntarily provided by the Affected Party. The Public Body states that there was no statutory requirement for the Affected Party to provide the record. The Public Body also states that it subsequently summarized the record and provided a copy of the summary to the Applicant. The Public Body then returned the record to the Affected Party and did not retain a copy as it was not deemed necessary.

[para 41] The Applicant states that, although the Public Body may not currently have possession of the record, the Public Body had possession of the record at one point in time.

[para 42] After a review of the evidence before me and all the arguments of the parties, I accept the Public Body's evidence that it currently does not have possession of the record. Therefore, this criterion is not fulfilled.

[para 43] However, although this finding would normally weigh in favour of the Affected Party having control of the record, I am hesitant, in this inquiry, to assign too much weight to this factor for the following reasons.

[para 44] First, the evidence before me shows that although the Public Body currently does not have possession of the record, it did have possession at one time. The evidence before me shows that the Public Body received the record from the Affected Party and retained the record for approximately two weeks before returning it to the Affected Party.

[para 45] Second, the Public Body's Manager of Partnerships gave evidence at the inquiry that one of the reasons why the Public Body did not keep a copy of the record was to ensure that the record would not be subject to the access requirements under the Act. I acknowledge that the Act contains limited record retention requirements under section 35(b) [previously section 34(b)] for personal information and no record retention requirements for business information. However, in my view, the practice of sending a record to outside parties for the purpose of avoiding the requirements of the Act opposes the spirit and intent of the Act. By purposely sending the record outside the Public Body, the Public Body was in effect trying to find a way to avoid the requirements of the Act instead of embracing the openness and transparency that the Act was intended to accomplish. In this regard, it appears that the Public Body came dangerously close to breaching section 92(1)(e) [previously section 86(1)(c.1)] which states that it is an offence to conceal a record with the intent to evade a request for access.

[para 46] Weighs in favour of the Affected Party having control of the record. However, I do not assign very much weight to this factor for the reasons stated above.

4) If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?

[para 47] The Public Body states that it does not have possession of the record nor is the record being held by an officer or employee of the Public Body for the purposes of his or her duties as an officer or employee.

[para 48] The Applicant did not specifically address this criterion.

[para 49] In this Order, I have found that the Affected Party was acting as an “employee” or, in other words, as a volunteer of the Public Body when it created the record. However, there is insufficient evidence before me that the Affected Party is holding the record as an officer or employee of the Public Body for the purposes of its duties as an officer or employee or whether the Affected Party is retaining the record for its own purposes. In this regard, I note that the Affected Party did not provide my Office with a written brief nor did it attend the inquiry. As such, I find that this criterion neither weighs in favour of the Public Body or the Affected Party having control of the record.

5) Does the institution have a right to possess the record?

[para 50] The Public Body states that it does not have a right to possess the record. The Public Body states that the Affected Party is not an employee of the Public Body and there is no legislated requirement that gives the Public Body the right to possess the record.

[para 51] The Applicant states that the Public Body has the power to compel the Affected Party to produce the record.

[para 52] After a review of the record, the evidence before me and all the arguments of the parties, I find that this criterion is fulfilled.

[para 53] The evidence, including the Public Body’s oral evidence at the inquiry and the April 12, 2000 letter show that it was the Public Body who asked for the record to be created for its use and subsequently obtained a copy of the record. In my view, if a public body requests that a record be created for its use and obtains a copy of that record, the public body will, in the absence of any contractual or statutory authority that says otherwise, have the right to possess the record.

[para 54] In addition, although the Public Body stated in its written submission that it did not have a records retention and disposition schedule for the record, the Public Body admitted in its April 5, 2002 letter that “Records Disposition Authority 88/22” would likely apply to the documents involved in the independent review. In my view, this schedule would also include the record at issue, as this record was, in my view, central to the independent review process.

[para 55] Furthermore, for the reasons outlined under criteria #6, I find that the record related to both the Public Body’s responsibility under the Partnership Program to sign Certificate of Recognitions (“CORs”) and to perform quality assurance reviews. As such, even if “Records Disposition Authority 88/22” does not apply to the record at issue, arguably the record would fall under that part of the Public Body’s record retention and disposition schedule that relates to CORs or quality assurance reviews.

[para 56] Weighs in favour of the Public Body having control of the record.

6) Does the content of the record relate to the institution's mandate and functions?

[para 57] The Public Body states that the content of the record does not relate to the Public Body's mandate and functions. The Public Body states that the record is indicative of a voluntary relationship between government and industry.

[para 58] The Applicant states that the record relates to the Public Body's mandate and functions.

[para 59] After a review of the record, the evidence before me and all the arguments of the parties, I find that this criterion is fulfilled.

[para 60] In this inquiry, I find that the record related to at least two of the Public Body's mandates and functions under the Partnerships Program. These included its responsibility to sign a COR and the responsibility to conduct a quality assurance review. Both the Memorandum of Understandings and the Partnerships Manual identify these items as part of the Public Body's mandate and functions under the program.

[para 61] At the oral inquiry, the Public Body gave testimony that it generally does not have much involvement in issuing a COR. The Public Body stated that the first step in the COR process is for the employer to arrange for a health and safety audit. The employer then submits the audit to a Certifying Partner who reviews the audit. If the Certifying Partner is satisfied with the audit, it will pass the COR onto the Public Body for its signature. The Public Body stated that the only action the Public Body takes before signing a COR is to review its files to see if there have been any prior regulatory problems with the particular employer in the past. If no prior regulatory problems are found in the Public Body's files, the Public Body will automatically sign the COR.

[para 62] However, the process outlined above is not what occurred in the case before me. The evidence, including the Public Body's oral evidence at the inquiry, the undated letter, the April 12, 2000 letter and the July 11, 2000 letter, show that the Public Body was much more involved in issuing this COR. In this case, the Public Body did not automatically sign the COR. Instead, the Public Body requested that the Affected Party conduct an independent review of the audits and submit its findings to the Public Body. The evidence before me also shows that once the Public Body received the written report from the Affected Party, the Public Body reviewed the record, summarized the record and requested that the Applicant's company make changes to the audits based on the findings reported in the record. It is clear that the Public Body signed the COR only after it received and approved the revised audits. The evidence suggests that Public Body felt that the independent review was necessary before it would sign the COR. As such, in this set of circumstances, I find that the content of the record directly related to the Public Body's responsibility to sign the COR.

[para 63] In addition, I find that the content of the record also directly related to the Public Body's responsibility regarding quality assurance reviews. The evidence before me, including the April 12, 2000 letter and the July 11, 2000 letter show that the Public

Body requested the independent review and used the records generated during this review as part of its quality assurance process.

[para 64] Weighs in favour of the Public Body having control of the record.

7) Does the institution have the authority to regulate the records used?

[para 65] The Public Body states that it does not have any regulated authority concerning this record.

[para 66] The Applicant states that the Public Body has the power and authority, as part of a quality assurance review, to compel the Affected Party to produce the record.

[para 67] The Canadian Oxford Dictionary defines the word “regulate” to mean “govern or control by law; subject to esp. legal restrictions”. In this inquiry, I am not aware of any legislative authority (outside the *Freedom of Information and Protection of Privacy Act*) that gives the Public Body the authority to regulate the record which is in the possession of the Affected Party. I find that this criterion is not fulfilled.

[para 68] Weighs in favour of the Affected Party having control of the record.

8) To what extent has the record been relied upon by the institution?

[para 69] The Public Body states that although it did assume a leadership role in mediating the dispute between the Applicant and the ASC, it submits that the records were used by the ASC and the Affected Party to ensure that the audits would qualify for a COR.

[para 70] The Applicant states that the Public Body relied on the record for the purposes of its quality assurance review.

[para 71] I find that the evidence before me shows that the Public Body relied on the record. The evidence, including the undated letter and the July 11, 2000 letter, show that once the Public Body received the record from the Affected Party, the Public Body reviewed the record, made a summary of the record and then sent the record to the Applicant’s company. In addition, it was the Public Body who then asked the Applicant’s company to revise its audits and resubmit the audits to the Public Body. Furthermore, once the revised audits were received from the Applicant’s company, the Public Body then reviewed the audits and sent another letter to the Applicant’s company confirming that the revisions were sufficient according to quality assurance standards.

[para 72] In addition, it is clear that the ASC had very little input into this process. Although the Public Body stated that the revised audits were re-submitted to the ASC for its review, the Public Body’s control of this process is nevertheless illustrated on page nine of the Public Body’s submission where the Public Body states:

*The review that was undertaken by [the Affected Party] was not to be used as a counterpoint to that completed by the ASC. There was an agreement that if [the Public Body] was satisfied with outcome [sic] of the review by [the Affected Party], then ASC would be satisfied with this somewhat out-of-the-ordinary process.*

(emphasis added)

[para 73] Furthermore, when I asked the Public Body during the inquiry to provide me with a copy of its covering letter to the ASC forwarding the revised audits to the ASC for its review, the Public Body, in its April 5, 2002 letter, replied that it was unable to locate any correspondence specifically directed to the ASC in this regard. In the April 5, 2002 letter the Public Body also reiterated its earlier comments and confirmed that any review by the ASC of the amended audits, if in fact one was done, would have been cursory at best.

[para 74] Weighs in favour of the Public Body having control of the record.

9) How closely is the record integrated with other records held by the institution?

[para 75] The Public Body states that the record is not integrated with the other records held by the Public Body.

[para 76] The Applicant states that, although the Public Body may not currently have possession of the record, the Public Body had possession of the record at one time.

[para 77] As previously mentioned, I find that the Public Body currently does not have possession of the record. As such, I find that the record is not integrated with the other records held by the Public Body.

[para 78] However, although the lack of integration with other records would normally weigh in favour of the Affected Party having control of the record, I am hesitant, in this inquiry, to assign too much weight to this factor for the following reasons.

[para 79] As previously mentioned under criterion # 3, the evidence before me shows that although the Public Body does not presently have possession of the record, it did have possession at one time. In addition, the Public Body's Manager of Partnerships provided evidence at the inquiry that one of the reasons why the Public Body returned the record to the Affected Party was to ensure that the record would not be subject to the access requirements under the Act. By sending the record outside the Public Body, I find that the Public Body was in effect trying to find a way to avoid the requirements of the Act instead of embracing the openness and transparency that the Act was intended to accomplish.

[para 80] Weighs in favour of the Affected Party having control of the record. However, I do not assign too much weight to this factor for the reasons stated above.

10) Does the institution have the authority to dispose of the record?

[para 81] In the Public Body's written submission the Public Body states that it does not control the record, it does not maintain copies of these types of records and has no records retention and disposition schedule for this type of record.

[para 82] The Applicant states that the Public Body should have a record retention and disposition schedule for the record at issue.

[para 83] After a review of the record, the evidence before me and all the arguments of the parties I find that this criterion is fulfilled. As previously mentioned in this Order, although the Public Body stated in its written submission that it did not have a records retention and disposition schedule for the record, the Public Body admitted in its April 5, 2002 letter that "Records Disposition Authority 88/22" would likely apply to the documents involved in the independent review. In my view, this schedule would also include the record at issue, as this record was, in my view, central to the independent review process.

[para 84] In addition, in this Order, I have found that the record at issue related to both its responsibility under the Partnership Program to sign CORs and to perform quality assurance reviews. As such, even if "Records Disposition Authority 88/22" does not apply to the record at issue, arguably the record would fall under that part of the Public Body's records retention and disposition schedule that relates to CORs or quality assurance reviews.

[para 85] Weighs in favour of the Public Body having control of the record.

**b) Conclusion**

[para 86] After a review of all the above criteria, I find that the Public Body presently has control of the record.

**B) At the time that the Public Body had the record in its custody or under its control, did the Public Body have a duty under section 35(b) [previously section 34(b)]?**

[para 87] Section 35(b) [previously section 34(b)] states:

*35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must*

...

*(b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it, or for any shorter period of time as agreed to in writing by*

- (i) the individual,*
- (ii) the public body, and*
- (iii) if the body that approves the records and retention and disposition schedule for the public body is different from the public body, that body.*

[para 88] There are two criteria that must be fulfilled under section 35(b) [previously section 34(b)]:

- (1) The information must be an individual's personal information; and
- (2) The Public Body must use the personal information to make a decision that directly affects the individual.

1) The information must be an individual's personal information

[para 89] The Public Body states that the information in the record is business information and not personal information of an individual.

[para 90] The Applicant states that the information in the record is his personal information as defined in section 1(n) [previously section 1(1)(n)] of the Act. The Applicant states that although the original audits were submitted under his company name, the information in the record should be considered his personal information. The Applicant states that he is the only employee of the company. As such, any information about his company is, in essence, information about himself. The Applicant states that this information would likely fall under the section 1(n)(i) [previously section 1(1)(n)(i)] (individual's name, home or business address), section 1(n)(viii) [previously section 1(1)(n)(viii)] (anyone else's opinions about the individual), and section 1(n)(ix) [previously section 1(1)(n)(ix)] (the individual's personal views or opinions, except if they are about someone else).

[para 91] Section 1(n) [previously section 1(1)(n)] defines personal information as "recorded information about an identifiable individual" and refers to a non-exhaustive list of information that would fall within this definition.

[para 92] In Orders 96-019, 96-020 and 99-023, the Commissioner stated that, for the purposes of the Act, the word "individual" means a single human being. In addition, other jurisdictions such as Ontario have also similarly defined the term. In Ontario Order 16, the Ontario Commissioner addressed the meaning of the term "individual" found in section 2(1) of the Ontario *Freedom of Information and Protection of Privacy Act* which

is similar to section 1(n) (previously section 1(1)(n)) of the Alberta *Freedom of Information and Protection of Privacy Act*. The Ontario Commissioner stated as follows:

*The use of the term 'individual' in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended 'identifiable individual' to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make it clear. The types of information enumerated under subsection 2(1) of the Act as 'personal information' when read in their entirety, lend further support to my conclusion that the term 'personal information' relates only to natural persons.*

[para 93] I have reviewed the record at issue. I find that the record does not contain the Applicant's personal information. Although the record contains information and opinions regarding the work done by the Applicant's company, it does not contain personal information about the Applicant. It does not refer to the Applicant's name, home address or home phone number nor does it contain an opinion about the Applicant. As such, I find that this criterion is not fulfilled.

2) The Public Body must use the individual's personal information to make a decision that directly affects the individual

[para 94] As I have found that the record does not contain the Applicant's personal information, I will not consider whether the Public Body used the personal information to make a decision that directly affected the Applicant.

3) Conclusion

[para 95] I find that the Public Body did not have a duty under section 35(b) [previously section 34(b)] to retain the information in the record. I find that the information in the record at issue does not contain the Applicant's personal information. As such, the criteria under section 35(b) [previously section 34(b)] are not fulfilled.

**V. ORDER**

[para 96] I make this Order under section 72 [previously section 68]:

**A) Does the Public Body presently have custody or control of the record?**

[para 97] I find that the Public Body has control of the record for the purpose of the Act. I order the Public Body to retrieve a copy of the record and process the Applicant's access request in regard to that record within 50 days of receiving a copy of this Order.

[para 98] I further order that the Public Body notify me in writing within 50 days of being given a copy of this Order, that the Public Body has complied with this Order.

**B) At the time that the Public Body had the record in its custody or under its control, did the Public Body have a duty under section 35(b)[previously section 34(b)]?**

[para 99] I find that the Public Body did not have a duty under section 35(b) [previously section 34(b)].

Dave Bell  
Adjudicator